Office of Chief Counsel Internal Revenue Service

memorandum

CC:SER:GEO:ATL:TL-N-3685-00 CLRountree

date: August 3, 2000

to: District Director, Georgia District

Attention: Floyd Braswell

Analysis Section 430 Room 850, Stop 601-D

from: District Counsel, Georgia District, Atlanta

ubject: Advice on Timeliness of Refund Claim for Excessive Deficiency Interest

Taxpayer:

E.I.N.:

Taxable Year Ended December 31,

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. §6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination or Appeals recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

This is in response to the memorandum dated June 14, 2000 requesting advice as to whether () submitted a timely claim for refund of

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excessive underpayment interest on their deficiency.

through the letter dated from (Service) has never formally disallowed service claim for refund of underpayment interest upon which the Service may act. Even without service letter, the claim is an adequate claim for refund of underpayment interest upon which the claim is an adequate claim for refund of underpayment interest under Avon Products, Inc. v. United States, 588 F.2d 342 (2d Cir. 1978). In addition, based on the Service's failure to formally disallow service service is failure to formally disallow service. Service service without service service is failure to formally disallow service. Furthermore, the period for service service service service service at least June 15, service service service before at least June 15, service servi

Therefore, under the guidelines of Revenue Procedure 99-40, we recommend that the Service determine whether it assessed excessive deficiency interest. If the Service determines that it assessed excessive interest, the Service should abate such interest and issue a refund with appropriate overpayment interest as soon as possible.

Please note that this memorandum does not address the correctness of 's computation of refundable interest. If you need assistance on that matter, we will provide assistance after request.

Issues

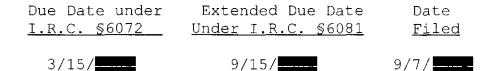
- A. Whether a letter dated constituted a valid informal claim.
- B. If filed a valid informal claim, whether such claim was filed within the limitation period for the filing of a refund claim.
- U.I.L.: 6511.00-00; 6511.01-03; 6511.02-00; 6511.09-00; 6513.00-00

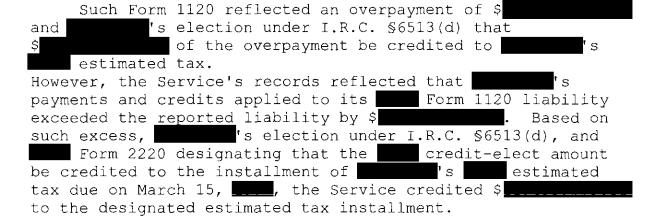
Facts

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filed a consolidated U. S. Corporation Income Tax Return (Form 1120) for calendar year Form

1120 was due and filed as follows:





On the Service refunded the remaining of the overpayment to _____.

No overpayment interest was paid on any portion of the overpayment. First, no overpayment interest is allowable on the portion credited to estimated taxes. I.R.C. \$6513(d); Treas. Regs. \$301.6402-3(a)(5), \$301.6402-3(a)(6), \$301.6513-1(d) and \$301.6611-1(h)(-1(h)(2)(vii); Martin Marietta Corp. v. United States, 572 F.2d 839, 841 - 842 (Ct. Cl. 1978); Avon Products, Inc. v. United States, 588 F.2d 342, 345 (2d Cir. 1978). Second, no interest is allowable when a refund is issued within 45 days of the filing of a return. I.R.C. \$6611(e)(1).

Assessment and Payment of Tax Deficiency and Interest

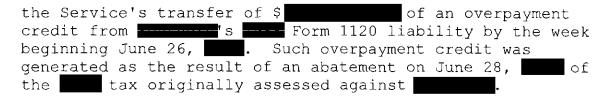
On June 10, ____, the Service assessed the following items with respect to ____''s ____ Form 1120:

Tax Deficiency Underpayment Interest

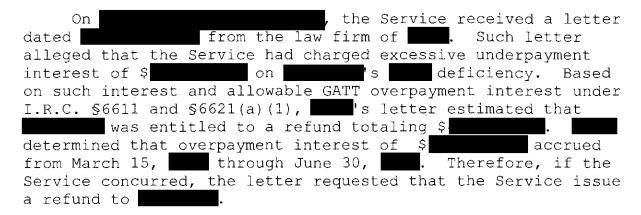
\$ \$

satisfied the deficiency and interest through two items. The first was an "advance payment" of the deficiency of \$ on February 14, The second was

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Correspondence Related to 's Deficiency Interest



Specifically 's letter stated the following:

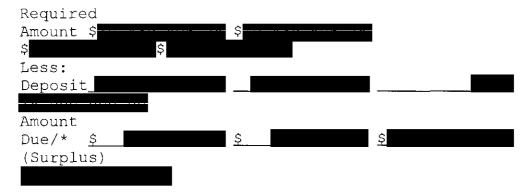


The attached "Allocation of Credit Elect" (creditelect analysis) reflected the following required installments and payments of estimated tax:

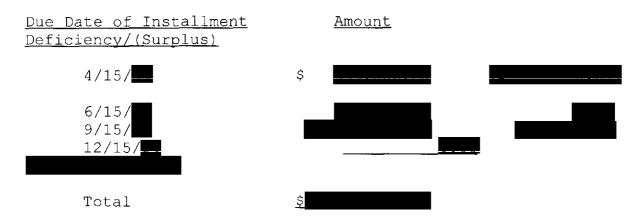
<u>Due Dates of Installments</u>

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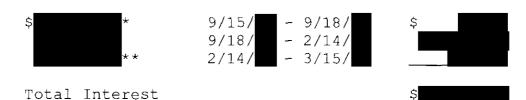


In addition, the credit-elect analysis applied the credit-elect amount as follows:



In support of the claimed excessive interest, attached interest computations reflected that underpayment interest properly accrued on the deficiency as follows:

Amount of Deficiency Period Over Which Amount of Subject to Interest Interest Accrued
Interest



- * Deficiency less refund on 9/18/
 ** Unpaid deficiency on 2/14/
- Contrary to I.R.C. §6611(e), see 's letter incorrectly asserted that interest was allowable on the refund of see .

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The documents provided to this office do not reflect the actual date or method of mailing of state 's letter dated

On September 11, _____, Jan Barnett (Ms. Barnett), the restricted interest examiner assigned to _______'s deficiencies and overpayments, orally advised _____ that there would be no refund of _____ deficiency interest. The denial of any refund was based on ______ 's application of the creditelect amount to the estimated tax installment due March 15, _____. At that time, the Service commenced accrual of underpayment interest on a subsequently determined deficiency that is less than the credit- elect amount from the due date of the estimated installment to which the taxpayer specifically applied a credit-elect amount. Rev. Rul. 84-58, 1984-1 C.B. 254; Rev. Rul. 88-98, 1988-2 C.B. 356, 357.

In denying the request, the Service did not consider whether the letter failed to comply with the requirements of a valid refund claim.

By letter dated _____, ___ supplemented its letter dated ____ and requested that the Service reconsider allowing ____ 's claim for abatement and refund of excessive ____ underpayment interest.

In support of the requested reconsideration, such letter specifically stated



Miscellaneous Facts

has not filed any Forms 843 or 1040X related to the deficiency interest.

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period). I.R.C. \$6511(c)(1). However, because did not submit any document that could be a refund claim by June 30, the extended period under I.R.C. \$6511(c) does not apply. I.R.C. \$6501(c)(3).

Because the "advance payment" of \$ ______ on February 14, _____ was applied to the _____ deficiency, the only relevant payment is the overpayment credit of \$ _____ transferred from _____ 's ____ Form 1120 liability as the result of the abatement on June 28, _____.

To start the two-year period for filing a refund suit, the Service is required to send a notice of disallowance of a refund claim by certified mail. I.R.C. §6532(a)(1).

has not waived its right to receive a notice of disallowance of its refund claim or extended such two-year period. I.R.C. §6532(a)(2) and §6532(a)(3). The Service has not issued any formal notice of disallowance to under I.R.C. §6532(a)(1).

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Discussion

Issue A - Letter was Valid Informal Refund Claim

Treasury Regulation §301.6402-2(b)(1) provides the following for refund claims:

.... The claim must set forth in detail each ground upon which a credit or refund is claimed and facts sufficient to apprise the Commissioner of the exact basis thereof.... A claim that does not comply with this paragraph will not be considered for any purposes as a claim for refund or credit.

The courts have long recognized the validity of informal claims that do not comply with all formal requirements set forth in Treasury Regulations (informal claim doctrine).

<u>United States v. Kales</u>, 314 U.S. 186 (1941); <u>Bonwit Teller & Co. v. United States</u>, 283 U.S. 258 (1931). The Supreme Court has stated the informal claim doctrine as follows:

... a notice fairly advising the Commissioner of the nature of the taxpayer's claim, which the Commissioner could reject because too general or because it does not comply with formal requirements of the statute and regulations, will nevertheless be treated as a claim where formal defects and lack of specificity have been remedied by amendment filed after the lapse of the statutory period... This is especially the case where such a claim has not misled the Commissioner and he has accepted and treated it as such.

Kales, 314 U.S. at 194.

A valid informal claim must possess both of the following two elements:

- a. A written component that adequately notifies the Service that the taxpayer believes that it has been subjected to an erroneous or illegal tax and requests a refund of the tax for a particular year for a specified reason indicating the erroneous or illegal collection.
- b. The document focuses attention on the merits of a dispute with sufficient information as to the tax and year to enable the Service to commence, if it wishes, an

examination into the claim.

Mills v. United States, 890 F.2d 1133, 1135 (11th Cir. 1989);
Miller v. United States, 949 F.2d 708, 711 (4th Cir. 1991);
Gustin v. Commissioner, 876 F.2d 485, 488 (5th Cir. 1989);
Estate of Hale v. Commissioner, 876 F.2d 1258, 1262 (6th Cir. 1989); Martin v. United States, 833 F.2d 655, 660 (7th Cir. 1987); Arch Eng'g Co. v. United States, 783 F.2d 190, 192 (Fed. Cir. 1986); Am. Radiator & Standard Sanitary Corp. v. United States, 318 F.2d 915, 920 (Ct. Cl. 1963); Barenfeld v. United States, 442 F.2d 371, 374 - 375 (Ct. Cl. 1971).

A document is a viable refund claim when the document's plain language reflects, directly or indirectly, (a) an overpayment of tax and (b) the taxpayer's resulting claim, demand, request for, or belief as to entitlement to, or expectancy of, or intent to seek any refund or credit of taxes. Clement v. United States, 472 F.2d 776, 779 (1st Cir. 1973), cert. denied, 414 U.S. 864 (1973); BCS Fin. Corp. v. United States, 930 F. Supp. 1273, 1278 (N.D. III. 1996), aff'd, 118 F.3d 522, 523 - 527 (7th Cir. 1997); Colgate-Palmolive-Peet Co. v. United States, 58 F.2d 499, 501 - 502 (Ct. Cl. 1932); Cumberland Portland Cement Co. v. United States, 104 F. Supp. 1010, 1012 - 1015 (Ct. Cl. 1952); Import Wholesalers Corp. v. United States, 368 F.2d 577, 579 - 580 (Ct. Cl. 1966); Dresser Indus., Inc. v. United States, 84 AFTR2d 99-5173 (N.D. Tex. 1999).

The courts examine all surrounding facts and circumstances of each case to determine whether a viable written component provided the required notice to the Service. Kales, 314 U.S. at 194 - 197; Furst v. United States, 678 F.2d 147, 151 (Ct. Cl. 1982); Gustin, 876 F.2d at 488 - 489; Estate of Hale, 876 F.2d at 1262 -1264; Am. Radiator & Standard Sanitary Corp., 318 F.2d at 920 - 921 & n. 8.

Issue A - Application of Law to Facts

deficiency interest. 's letter dated and enclosures constituted the written component of the refund claim. Their language clearly notified the Service that believed that it has been subjected to excessive deficiency interest of \$ and requested a refund of such interest under the decision in Avon Products, Inc.

In addition, the letter's plain language was sufficient to focus the Service's attention on the merits of the dispute over deficiency interest and provide information to enable the Service to commence an examination into the claim. Such language disclosed sufficient details apprising Service of the amount of the disputed interest and the underlying issue that allowed a determination of the validity of 's claim. Burrell v. Fahs, 232 F.2d 163, 165 (5th Cir. 1956); Jones v. United States, 5 F. Supp. 146, 148, 150 (Ct. Cl. 1933), cert. denied sub nom. United States v. Jones, 293 U.S. 566 (1934).

The sufficiency of service's conduct in response to the letter. Kales, 314 U.S. at 191 - 192, 194, 196 - 197; Bonwit Teller & Co., 283 U.S. at 261 - 262, 264; Neilson v. Harrison, 131 F.2d 205, 209 (7th Cir. 1942); Import Wholesalers Corp., 368 F.2d at 579 - 580. Ms. Barnett was able to orally deny the request in service's position set forth in Revenue Rulings 84-58 and 88-98. In addition, at that time, the Service did not consider whether the letter was a timely filed, valid refund claim.

Issue B - Time for Filing Refund Claim

A taxpayer generally must file a claim for refund of income tax by the later of (a) three years of the time that the return filed or (b) two years after payment of the related income tax. I.R.C. §6511(a). When a claim is filed within two years of payment and more than three years after the return is filed, the amount of an allowed refund cannot exceed the amount of payments made during two years immediately preceding the filing of claim. I.R.C. §6511(b)(2).

The date of payment with respect to transfers of overpayment credits is the date of the actual transfer from another liability. Braithwaite v. United States, 873 F. Supp. 452 (D. Col. 1994); Donahue v. United States, 95-2 U.S.T.C. ¶50,390 (Fed. Cl. 1995); Urwyler v. United States, 77 AFTR2d 96-294 (E.D. Cal. 1996); Fitzmaurice v. United States, 84 AFTR2d 99-7052 (S.D. Tex. 1999).

Refund claims for underpayment interest are subject to the same limitations periods as the underlying tax. I.R.C.

\$6601(f)(1); <u>Alexander Proudfoot Co. v. United States</u>, 454 F.2d 1379, 1382 - 1385 (Ct. Cl. 1972).

Issue B - Application of Law to Facts

The limitation period under I.R.C. §6511 for the filing of a refund claim related to some size of deficiency interest did not expire before June 28, some such date was two years after the date that the Service abated tax for and transferred \$ of the resulting overpayment to the solitability. The Service received solved is informal refund claim on June 15, some score of the resulting overpayment to the solution of the service received in the sexcessive solution of the sexcessi

letter. The reference to provisions of Revenue Procedure 99-40 for application of credit-elect amounts did not add any new ground that was outside the scope of the "use of money" principle enunciated in Avon Products, Inc. The facts on which the letter was based would necessarily have been ascertained by the Service in determining the merits of the original informal claim filed June 15, In essence, 's letter is merely a reminder of the Service's obligation to respond to the claim filed June 15, In essence in the claim f

Because the Service has never formally disallowed 's refund claim, 's letter, even though received after the refund limitation period expired, was a valid amendment of 's informal claim filed June 15, Bemis Bros. Bag Co. v. United States, 289 U.S. 28, 33 - 35 (1933); United States v. Memphis Cotton Oil Co., 288 U.S. 62, 71 (1933); St. Joseph Lead Co. v. United States, 299 F.2d 348, 350 - 351 (2d Cir. 1962); United States v. Ideal Basic Indus., Inc., 404 F.2d 122, 124 (10th Cir. 1968), cert denied., 395 U.S. 936 (1969).

Because has not waived its right to receive a notice of disallowance of its refund claim and the Service has never issued such a notice, the limitation period for 's filing of a refund suit may never expire. Rev. Rul 56-381, 1956-2 C.B. 2 C.B. 953; Detroit Trust Co. v. United States, 130 F. Supp. 815, 818 (Ct. Cl. 1955). Alternatively, even if the Service does not deny the claim as required I.R.C. \$6532(a)(1), the six-year period under 28 U.S.C. \$2401 and

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\$2501 for filing general monetary claims against the government might impose an outside limit of six years on the period for filing a refund suit. I.R.C. \$6532(a)(1). Finkelstein v. United States, 943 F. Supp. 425, 432 (D.N.J. 1996).

Under either theory, has until at least June 15, to file a refund suit if the Service fails to issue a notice of disallowance.

Conclusion and Recommended Action

filed a timely refund claim through solutions. Even without solutions is an adequate claim for refund of underpayment interest. In addition, solution solution is claim could be modified after the limitations period would have otherwise expired because the Service had never formally disallowed the claim. Based on the Service's failure to formally disallow solutions is claim, such claim continues to be a claim for refund of underpayment interest upon which the Service may act.

Therefore, under the guidelines of Revenue Procedure 99-40, we recommend that the Service determine whether it assessed excessive deficiency interest. If the Service determines that it assessed excessive interest, the Service should abate such interest and issue a refund with appropriate overpayment interest as soon as possible.

To assist such recommended determination, attached is a copy of second 's Form 2220.

Because no further action is required by this office at this time, we are closing our file.

If you have any questions, Please contact me at 404/338-7943.

CAROLYN L. ROUNTREE
Special Litigation Assistant

Attachment:

Form 2220

cc: TL Cats

cc: Mr. Roy Allison
 Assistant Regional Counsel (TL)
 Room 2110, Stop 180-R

cc: Mr. William E. Cooper
 Manager, Examination Group 1361
 Koger Center, Stop 652-D
 (w/attachment)